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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,225	03/29/2004	Gary R. Kish	METZ 2 00008	3030
27885	7590	07/06/2006	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			AYRES, TIMOTHY MICHAEL	
			ART UNIT	PAPER NUMBER

3637

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/812,225

Applicant(s)

KISH ET AL.

Examiner

Timothy M. Ayres

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 15-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/14/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is a first office action on the merits of application SN 10/812,225.

#### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, the cabinet runner side wall extension in the reply filed on 6/19/06 is acknowledged. The reply acknowledges that claims 1-13 are elected. Claim 14 also reads on this group and is thus examined below. Claims 15-19 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/19/06.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 10, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,890,784 to Domig. Domig teaches a cabinet runner (1) with a first wall. In regards to claims 2 and 14 the first wall has a first flange with a first and second portion seen in figure 6 as the top flange and a second flange is the bottom flange also as seen in figure 6. In regards to the other claims the bottom flange is used as the first flange. A first tab (13) and a second tab (11) are located in the first wall and have the shape and structure substantially as claimed.

3. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 5,470,144 to Wen. Wen teaches two embodiments first is figure 10 -12 which reads on claims 1-8 and 10-13. The second embodiment of figures 13-15 reads on claims 1-10. Both embodiments are a cabinet runner (21,31) with a first wall (22,33) that has a first (28,35) and second (27,34) flanges. The first wall (22) of the first embodiment includes first and second tabs (25,26) located at the ends of the first wall and having the shape and structure of the tabs as substantially claimed. A wheel (23) is attached to the first wall (22) and is located in an opening in front of the first flange (28). A portion of the wheel is in between the first flange and the first wall as best seen in figure 11. The second embodiment teaches using multiple tabs (36,37) at both ends of the runner as substantially claimed in claim 9.

4. Claims 1-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,927,839 to Alfaro. Alfaro teaches a cabinet runner as best seen in figures 7 and 8. A first wall (44) has tabs (54) at each end of the runner that each has a first portion (56) and a second portion (58). As seen in figure 8 the first wall has first and second flanges.

5. Claims 1-8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 3,771,849 to Barber. Barber teaches a cabinet runner (10) with first and second flanges (20) extending substantially normal to the first wall (24). First tab (30) and second tab (50) each have first portion and second portions as claimed.

6. Claims 1-6, 10, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,470,143 to Gill. Gill teaches a cabinet runner with a first wall (56) that has a second flange (58) and a first flange (57) with a first portion and a second portion (59). A first tab (86) has a first portion (87) and a second portion (88).

7. Claims 1-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,785,401 to Bowyer. Bowyer teaches a cabinet runner with a first wall (42) that has first and second flanges as best seen in figures 6-8. A first tab (46) and a second tab (44) extend from the first wall substantially as claimed.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

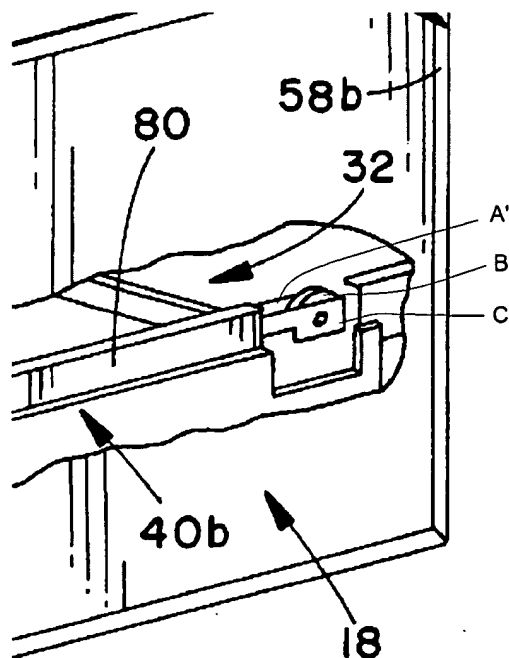
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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10. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,890,784 to Domig in view of US Patent 5,906,422 to Golias. Domig teaches every element as claimed and discussed above except a wheel positioned adjacent an end of the cabinet runner, the wheel interposed between the first wall and a portion of the first flange, and a portion of the wheel protrudes through an opening formed in the flange. Domig teaches a cabinet runner formed as part of the shelf (30) as seen in figure 3. Below is a marked up and zoomed in copy of the wheel structure in figure 3. A wheel (B') is interposed between the first wall (A') and a portion of the first flange (C'). At the time of the invention it would have been obvious for a person of ordinary skill in the art to add a second portion to the bottom flange and have the wheel interposed therein as taught by Golias to increase the strength of the runner to handle more weight.



Golias '422 Portion of Figure 3

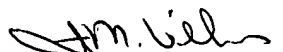
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA  
6/27/06



JANET M. WILKENS  
PRIMARY EXAMINER  
Art Unit 3637